

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NATIONAL LABOR RELATIONS BOARD,
ON BEHALF OF ALLWAYS EAST
TRANSPORTATION, INC.,**

Applicant

vs.

Civil No. 7:15 mc 0028 (NSR)

**NATIONAL EXPRESS CORPORATION,
d/b/a DURHAM SCHOOL SERVICES,**

Respondent

**RESPONDENT'S ANSWER TO APPLICATION FOR ORDER ENFORCING
ADMINISTRATIVE SUBPOENA DUCES TECUM**

NOW COMES Durham School Services, Respondent herein, and answers the Application for Order Enforcing Administrative Subpoena Duces Tecum, as follows:

With regard to the specific allegations set forth in the application, Respondent answers as follows:

1. Admitted
2. Admitted
3. Admitted upon information and belief
4. Admitted upon information and belief
5. Admitted upon information and belief
6. Admitted
7. Admitted
8. Admitted upon information and belief

9. Respondent admits upon information and belief the allegation that Judge Flynn adjourned the hearing pending compliance with the subpoena. Respondent admits that it informed both the General Counsel and Allways East counsel of its willingness to comply with the subpoena and that it attempted to engage counsel for Allways East in a more specific discussion of the documents that Respondent maintained and the documents that Allways East was seeking, but that counsel for Allways East refused to take or return Respondent's calls. Respondent further admits that it undertook steps to furnish the requested documents on Allways East counsel by electronic mail, but that Allways East counsel refused to accept the documents and insisted that this action be filed despite Respondent's willingness to comply. Respondent denies that full compliance has not been achieved and denies all allegations not specifically admitted.

10. Respondent admits that it has "provided documents to Allways East, or indicated to Allways East that no such documents exist, with regards to paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, and 18 of the subpoena." Respondent denies that it has failed to respond to paragraphs 4 and 16 of the subpoena, but admits that it has no documents responsive to those paragraphs that were not produced in connection with other paragraphs of the subpoena. Respondent denies all allegations not specifically admitted.

11. Denied

12. Regarding the relief requested by Applicant, Respondent denies that a court order is necessary, as Respondent has already complied with the subpoena and is willingly cooperating. However, Respondent has no objection to appearing before Judge Flynn, at a time and place to be fixed by Judge Flynn after consultation with all parties, including Respondent, and to re-produce, as necessary, documents responsive to the subpoena issued by Allways East.

FIRST AFFIRMATIVE DEFENSE

Respondent has produced to Allways East counsel the documents that it possesses that are responsive to the subpoena issued by Allways East.

SECOND AFFIRMATIVE DEFENSE

Allways East has refused to cooperate in Respondent's efforts to comply with the subpoena.

THIRD AFFIRMATIVE DEFENSE

Allways East acted in bad faith in insisting that the Board bring this enforcement proceeding, and its purpose is solely to create delay in the administrative proceedings. This proceeding was and is wholly unnecessary.

WHEREFORE Respondent respectfully requests that the court enter an order dismissing the Application. Alternatively, Respondent requests that the court enter an appropriate order that will facilitate the expeditious return of this matter to ALJ Flynn for resolution and determination of any outstanding issues regarding compliance with the subpoena.

CONSTANGY, BROOKS & SMITH, LLP

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Dated: February 24, 2015